IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO: 21759 of 2004

Between:

M/s.Somdatt Builders Ltd,

Rep by its Senior Finance Manager

Mr.Sudhir Kumar 56-58,

Community Centre,

East of Kailash, New Delhi-110 065.

..... PETITIONER

AND

The Regional Transport officer
Ongole, Prakasam Dist.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ of Mandamus or any other appropriate Writ or order or direction declaring the action of the Respondent in refusing to issue No objection Certificates by returning the application in respect of 4 vehicles bearing Nos.AP27-U 4534, AP 27-U 4539, AP 27-U 4540 and AP 27-U 4542 on the ground that there is no specific direction from the Hon'ble court for transfer of ownership or alienation as arbitrary, illegal without jurisdiction and consequently direct him to issue No objection/Clearance certificates in respect of the petitioner's vehicles.

Counsel for the Petitioner: MR.P.GIRISH KUMAR

Counsel for the Respondent: GP FOR TRANSPORT

The Court at the admission stage, made the following:

THE HON'BLE MR JUSTICE K.C.BHANU

WRIT PETITION NO: 21759 of 2004

ORDER:

This writ petition has been filed to declare the action of the respondent in refusing to issue 'No Objection Certificate' by returning the application in respect of four vehicles bearing Regn. Nos.AP27-U4534, AP27-U4539, AP27-U4540 and AP27-U4542, as arbitrary and illegal.

2. The grievance of the petitioner is that the order under challenge is not in accordance with the provisions of the Motor Vehicles Act, 1988 (for brevity 'the Act, 1988').

3. The learned counsel appearing for the petitioner vehemently contended that the order under challenge is contrary to the Rule 58 of the Central Motor Vehicles Rules and therefore, the respondent has no authority to reject it based on the direction given by the High Court that there is no any specific direction for issue of 'No Objection Certificate'.

4. The learned Government Pleader for Transport appearing for the respondent contended that the respondent has to pass appropriate orders in accordance with Sub-section (3) of Section 48 of the Act, 1988 and accordingly, the order is passed. He further contended that the petitioner is due an amount of Rs.17,00,000/- towards entry tax and hence, the order under challenge does not suffer from any legal infirmities.

5 . As seen from the material available on record, the petitioner made an application for issue of 'No Objection Certificate'. The impugned proceedings dated 29-10-2004, issued by the respondent, stating that there is no specific order of Transfer of Ownership or alienation by this Court and therefore, the application for cancellation of permit and issue of clearance certificate so as to

alienate or Transfer of Ownership cannot be considered, therefore, the application is returned.

6. Sub-Section (3) of Section 48 of the Act, 1988 reads that the competent authority has to make such an inquiry, and requiring the applicant to comply with such directions as it deems fit and within thirty days of the receipt thereof, by order in writing, communicate to the applicant that it has granted or refused to grant the No Objection Certificate. The impugned order is completely not in accordance with sub section 3 of Section 48 of the Act, 1988.

7. Therefore, the impugned order is set aside. The respondent is directed to consider the application of the petitioner in accordance with the provisions of the Act, 1988, particularly keeping in view of the sub section (3) of Section 48 of the Act, 1988 and read with Rule 58 of the Central Motor Vehicles Rules, within a period of ten days from the date of receipt of a copy of this order.

8. Accordingly, the Writ petition is disposed of. No costs.

_____ December 10, 2004

Note:

Issue C.C. by 13-12-2004

B/o.

KVR

TO

1 The Regional Transport officer

Ongole, Prakasam Dist.

2 Two C.Cs. to G.P. for Transport, High Court buildings,

High Court of A.P., Hyderabad.

3 Two C.D. Copies.